

State of Wisconsin



2009 Assembly Bill 123

Date of enactment: **June 19, 2009**

Date of publication*: **July 3, 2009**

2009 WISCONSIN ACT 26

AN ACT *to amend* 808.04 (3), 808.04 (4), subchapter III (title) of chapter 809 [precedes 809.30], 809.30 (title), 809.30 (1) (a), 809.30 (1) (b) 4., 809.30 (1) (d), 809.30 (1) (e), 809.30 (2) (a) and 980.038 (4) (a); and *to create* 48.465, 938.47 and 971.17 (7m) of the statutes; **relating to:** appellate procedure regarding commitments of persons found not guilty by reason of mental disease or defect and commitments of sexually violent persons.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 48.465 of the statutes is created to read:

48.465 Motion for postdisposition relief and appeal. (1) APPEAL BY RESPONDENT. A motion for postdisposition relief from a final order or judgment by a person subject to this chapter shall be made in the time and manner provided in ss. 809.30 to 809.32. An appeal from a final order or judgment entered under this chapter or from an order denying a motion for postdisposition relief by a person subject to this chapter shall be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. The person shall file a motion for postdisposition relief in circuit court before a notice of appeal is filed unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised.

(2) APPEAL BY STATE. An appeal by the state from a final judgment or order under this chapter may be taken to the court of appeals within the time specified in s. 808.04 (4) and in the manner provided for civil appeals under chs. 808 and 809.

(3) EXCEPTIONS. This section does not apply to a termination of parental rights case under s. 48.43 or to a parental consent to abortion case under s. 48.375 (7).

SECTION 2. 808.04 (3) of the statutes is amended to read:

808.04 (3) Except as provided in subs. (4) and (7), an appeal in a proceeding under s. 971.17, a criminal case, or a case under ch. 48, 51, 55, 938, or 980 shall be initiated within the time period specified in s. 809.30 (2) or 809.32 (2), whichever is applicable.

SECTION 3. 808.04 (4) of the statutes is amended to read:

808.04 (4) Except as provided in sub. (7m), an appeal by the state in either a proceeding under s. 971.17, a criminal case under s. 974.05, or a case under ch. 48, 938, or 980 shall be initiated within 45 days of entry of the judgment or order appealed from.

SECTION 4. Subchapter III (title) of chapter 809 [precedes 809.30] of the statutes is amended to read:

CHAPTER 809

SUBCHAPTER III

APPEAL PROCEDURE IN COURT OF

APPEALS IN S. 971.17

PROCEEDINGS AND IN CRIMINAL AND

CH. 48, 51, 55, AND, 938, AND

980 CASES

SECTION 5. 809.30 (title) of the statutes is amended to read:

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

809.30 (title) Rule (Appeals in s. 971.17 proceedings and in criminal, ch. 48, 51, 55, and, 938, and 980 cases).

SECTION 6. 809.30 (1) (a) of the statutes is amended to read:

809.30 (1) (a) "Final adjudication" means the entry of a final judgment or order by the circuit court in a s. 971.17 proceeding, in a criminal case, or in a ch. 48, 51, 55, or 938, or 980 case, other than a termination of parental rights case under s. 48.43 or a parental consent to abortion case under s. 48.375 (7).

SECTION 7. 809.30 (1) (b) 4. of the statutes is amended to read:

809.30 (1) (b) 4. A subject individual or ward seeking postdisposition relief in a s. 971.17 proceeding or a case under ch. 51 or 55, or 980.

SECTION 8. 809.30 (1) (d) of the statutes is amended to read:

809.30 (1) (d) "Postdisposition relief" means an appeal or a motion for postdisposition relief under this subchapter from a circuit court's final adjudication.

SECTION 9. 809.30 (1) (e) of the statutes is amended to read:

809.30 (1) (e) "Prosecutor" means a district attorney, corporation counsel, or other attorney authorized by law to prosecute represent the state in a criminal case, a proceeding under s. 971.17, or a case under ch. 48, 51, 55, or 938, or 980.

SECTION 10. 809.30 (2) (a) of the statutes is amended to read:

809.30 (2) (a) *Appeal procedure; counsel to continue.* A person seeking postconviction relief in a criminal case; a person seeking postdisposition relief in a case under ch. 48 other than a termination of parental rights case under s. 48.43 or a parental consent to abortion case under s. 48.375 (7); or a person seeking postdisposition relief in a s. 971.17 proceeding or in a case under ch. 51, 55, or 938, or 980 shall comply with this section. Counsel representing the person at sentencing or at the time of the final adjudication shall continue representation by filing a notice under par. (b) if the person desires to pursue postconviction or postdisposition relief unless counsel is discharged by the person or allowed to withdraw by the circuit court before the notice must be filed.

SECTION 11. 938.47 of the statutes is created to read:

938.47 Motion for postdisposition relief and appeal. (1) **APPEAL BY RESPONDENT.** A motion for postdisposition relief from a final order or judgment by a person subject to this chapter shall be made in the time and manner provided in ss. 809.30 to 809.32. An appeal from a final order or judgment entered under this chapter or

from an order denying a motion for postdisposition relief by a person subject to this chapter shall be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. The person shall file a motion for postdisposition relief in circuit court before a notice of appeal is filed unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised.

(2) **APPEAL BY STATE.** An appeal by the state from a final judgment or order under this chapter may be taken to the court of appeals within the time specified in s. 808.04 (4) and in the manner provided for civil appeals under chs. 808 and 809.

SECTION 12. 971.17 (7m) of the statutes is created to read:

971.17 (7m) MOTION FOR POSTDISPOSITION RELIEF AND APPEAL. (a) A motion for postdisposition relief from a final order or judgment by a person subject to this section shall be made in the time and manner provided in ss. 809.30 to 809.32. An appeal by a person subject to this section from a final order or judgment under this section or from an order denying a motion for postdisposition relief shall be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. The person shall file a motion for postdisposition relief in the circuit court before a notice of appeal is filed unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised.

(b) An appeal by the state from a final judgment or order under this section may be taken to the court of appeals within the time specified in s. 808.04 (4) and in the manner provided for civil appeals under chs. 808 and 809.

SECTION 13. 980.038 (4) (a) of the statutes is amended to read:

980.038 (4) (a) A motion for postcommitment relief by a person committed under s. 980.06 shall be made in the time and manner provided in s. ss. 809.30 to 809.32. An appeal by a person who has been committed under s. 980.06 from a final order under s. 980.06, 980.08, or 980.09 or from an order denying a motion for postcommitment relief or from both shall be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. If a person is seeking relief from an order of commitment under s. 980.06, the person shall file a motion for postcommitment relief in the trial court prior to an appeal unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised.

SECTION 14. Effective date.

(1) This act takes effect on the first day of the 4th month beginning after publication.